

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY - 8 1998

In the Matter of)	
)	
Communications Assistance for)	CC Docket No. 97-213
Law Enforcement Act)	DA 98-762

To: The Commission

COMMENTS OF CENTURYTEL WIRELESS, INC.

CenturyTel Wireless, Inc. ("CenturyTel")¹ hereby submits its comments on the Commission's Public Notice in the above-captioned proceeding.² CenturyTel joins with those parties respectfully requesting that the Commission exercise its authority under the Communications Assistance for Law Enforcement Act³ ("CALEA") to extend the CALEA compliance date from October 25, 1998 until at least two years after the date final technical standards for CALEA are promulgated. Due to the uncertainty that has surrounded the interim compliance standards and the current commercial unavailability of CALEA-compliant hardware

¹ CenturyTel Wireless, Inc., formerly Century Cellnet, Inc., is one of the country's largest wireless telecommunications companies. CenturyTel and its affiliates provide a variety of cellular and PCS services in several states in the mid-west, mid-south and Alaska. CenturyTel and its subsidiaries are clearly "telecommunications carriers" for purposes of the CALEA's requirements.

² *Public Notice, Communications Assistance for Law Enforcement Act*, DA 98-762 (rel. April 20, 1998) ("*Notice*").

³ 47 U.S.C. §§ 1000 *et seq.*

and software, it is “not reasonably achievable”⁴ for CenturyTel or other carriers to meet the current compliance deadline. Given the time needed to develop, manufacture, and install CALEA-compliant equipment once final standards are adopted, the requested extension of time applicable to all telecommunications carriers is clearly warranted.

I. The Commission Has Clear Statutory Authority Under CALEA to Extend the Compliance Date.

While many aspects of CALEA are mired in controversy, the issue of the Commission’s authority to extend the CALEA compliance date is not one of them. Under the plain language of the statute, the Commission is granted clear authority to extend the date for compliance with CALEA’s technical standards.

Indeed, under Section 107(c), the Commission is authorized to “grant an extension” of the deadline for complying with the assistance capability requirements if the Commission, after consulting with the Attorney General, “determines that compliance . . . is not reasonably achievable through application of technology available within the compliance period.”⁵ This section gives the Commission the flexibility to extend the deadline to a “date determined by the Commission as necessary for the carrier to comply” or for “2 years after the date on which the extension is granted,” whichever is earlier.⁶ As numerous commenters to the Commission’s

⁴ 47 U.S.C. § 1006(c).

⁵ 47 U.S.C. § 1006(c)(2).

⁶ 47 U.S.C. § 1006(c)(3). This limit of two years from the date the extension is granted should not preclude the relief requested. Because Section 107(c)(1) expressly allows the grant of “1 or more extensions of the deadline,” it is apparent that Congress did not intend to require compliance before it is “reasonably achievable.” 47 U.S.C. § 1006(c)(1). As detailed in the next

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CALEA Notice of Proposed Rulemaking⁷ correctly recognized, this Section unambiguously gives the FCC the authority to extend the compliance deadline under appropriate circumstances.⁸ As detailed in the next section, such circumstances are clearly present in this case.⁹

Further, the Commission enjoys authority under Section 107(b) to “provide a reasonable time . . . for compliance with and transition to any new standard.”¹⁰ This authority is available if there is a failure to issue technical standards or if “a Government agency or any other person believes that such standards are deficient.”¹¹ As the Commission is aware, final technical standards for CALEA have not yet been issued. Moreover, the Commission currently has before it three petitions challenging the sufficiency of the industry’s interim standards and seeking Commission intervention.¹² As such, it seems clear that the Commission has the authority to

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section, such compliance is not reasonably achievable until at least two years after final standards are adopted.

⁷ Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Notice of Proposed Rulemaking*, FCC 97-356 (rel. Oct. 10, 1997) (“*NPRM*”).

⁸ See, e.g. Comments of 360⁰ Communications Corp. at 7-8 (filed Dec. 12, 1997); Comments of BellSouth Corporation at 18-19 (filed Dec. 12, 1997); Motorola, Inc. Comments at 11 (filed Dec. 12, 1997).

⁹ Similarly, the Commission would appear to have authority to extend the compliance deadline under Section 109(b) of CALEA, which permits the Commission to “determine whether compliance with the assistance capability requirements . . . is reasonably achievable with respect to any equipment, facility or service installed or deployed after January 1, 1995.” 47 U.S.C. § 1008(b).

¹⁰ 47 U.S.C. § 1006(b)(5).

¹¹ *Id.*

¹² See Communications Assistance for Law Enforcement Act, *Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act*, Center for Democracy & Tech. (dated Mar. 26, 1998) (“*CDT Petition*”); Establishment of Technical

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establish a new deadline by which carriers would be required to comply with the finalized standards.¹³

II. Due to the Uncertainty Surrounding the CALEA Technical Standards and the Subsequent Impact on Equipment Development, the Compliance Date Should Be Extended Until at Least Two Years After the Adoption of Final Standards.

Having established that the Commission has the authority to extend the CALEA compliance date, CenturyTel agrees with TIA and others that such an extension is clearly warranted in this case.¹⁴ Indeed, because of delays to date in the standard-setting process, the tremendous uncertainty surrounding the interim standards, and the time required to develop and deploy CALEA-compliant equipment once final standards are agreed upon, the public interest requires extending the compliance date until at least two years after final standards are adopted.

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Requirements and Standards for Telecommunications Carrier Assistance Capabilities Under the Communications Assistance for Law Enforcement Act, *Joint Petition for Expedited Rulemaking*, Dept. of Justice (filed Mar. 27, 1998) (“*FBI Petition*”); Rulemaking Under Section 1006 of the Communications Act of 1934, as amended, and Section 107 of the Communications Assistance for Law Enforcement Act to Resolve Technical Issues and Establish a New Compliance Schedule, *Petition for Rulemaking*, Telecommunications Industry Assoc. (“TIA”) (dated Apr. 2, 1998) (“*TIA Petition*”). Each of these petitions discusses the industry’s interim standards (J-STD-025).

¹³ 47 U.S.C. § 1006(b)(5).

¹⁴ See *TIA Petition* at 10; Petition for the Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act by AT&T Wireless Services, Inc., Lucent Technologies Inc., and Ericsson Inc., *Petition for Extension of Compliance Date* at 1 (dated Mar. 30, 1998) (“*AT&T Petition*”); United States Telephone Assoc. Petition for Extension of Compliance Date Under Section 107(c) of the Communications Assistance for Law Enforcement Act, *Petition*, USTA at 1 (dated Apr. 24, 1998) (“*USTA Petition*”).

First, it is abundantly clear that deployment of CALEA-compliant equipment simply is not possible before the current October 25, 1998 deadline. The CALEA standard-setting process to date has been characterized by delay. For example, the announcement of final capacity standards – a critical prerequisite to the development of technical standards – was delayed for three years and was only recently released.¹⁵ As a result, CALEA-compliant equipment does not exist commercially and is unlikely to be commercially available before the existing deadline. As emphasized by AT&T Wireless Services, Inc. in its petition in this proceeding, “neither of [its] primary vendors will have CALEA-compliant technology available within the compliance period.”¹⁶ CenturyTel faces a similar situation. Century uses Nortel switches in its system. As illustrated in the Department of Justice’s January 26, 1998 Report to Congress on CALEA, Nortel does not expect to begin full commercial deployment of its compliant equipment until September of 2000 – a date well after the current compliance deadline.¹⁷ In addition, in this Report to Congress, the DOJ’s own survey of manufacturers showed that a majority of them will not be able to provide even “partial” CALEA solutions until 2001.¹⁸

The uncertainty surrounding the current interim standards has also contributed substantially to the present situation. Even though interim standards have been established, these standards have been, and continue to be, challenged by law enforcement. These challenges have

¹⁵ See *Implementation of Section 104 of the Communications Assistance for Law Enforcement Act*, 63 Fed. Reg. 12, 218 (Mar. 12, 1998).

¹⁶ *AT&T Petition* at 9.

¹⁷ See *Communications Assistance for Law Enforcement Act: Implementation Report*, Dept. of Justice (Jan. 26, 1998) at 18 (“*DOJ Report to Congress*”).

¹⁸ See *DOJ Report to Congress* at 18 (Appendix B).

“created great uncertainty about whether manufacturers will have to modify their standards.”¹⁹

The industry simply does not know if the existing standards will be changed in the future, requiring substantial modification of any equipment or software produced. Thus, as the *TIA Petition* explains, because of this uncertainty, manufacturers have understandably been reluctant to deploy “scarce engineering resources to a solution that the Commission may subsequently modify.”²⁰

Further, requiring manufacturers and carriers to go forward on the basis of uncertain interim standards is clearly not in the public interest. As TIA points out, “*any* modification in [the interim standard] could require complex changes in a manufacturer’s individual CALEA solution.”²¹ Accordingly, requiring them to move ahead prematurely would “waste valuable engineering resources, sacrific[e] other profit-making activity, and expose the companies to the prospect of having to create several versions of its CALEA solution.”²² Similar unnecessary costs would be incurred by any carrier that deployed such equipment at this time. Clearly, the public would be better served by a carrier using its resources to add consumer services, upgrade technology or expand coverage, rather than deploying and re-deploying various versions of CALEA-compliant equipment.

Yet, even after final standards are adopted, additional time will be required to manufacture the equipment, test it, and then deploy it. As TIA points out in its *Petition*,

¹⁹ *TIA Petition* at 4.

²⁰ *Id.*

²¹ *Id.* at 6.

²² *Id.*

“software development efforts for digital telephony enhancements require approximately 24 months of research and development time for manufacturers.”²³ Then, after the manufacturer’s research and development has taken place, additional time is needed to allow carriers to “modify their equipment, facilities and services to accept the new features and to test the implementation.”²⁴ For example, CenturyTel estimates that it will need to modify and test the CALEA modifications to at least eight different switches, and, if cell sites require modification, CenturyTel would need to bring over 500 cell sites into compliance. It is easy to see how the deployment process alone will take several months. Even law enforcement recognizes that the industry will require at least 18 months to build the equipment and write the software necessary to comply with any final standards.²⁵ Accordingly, at a minimum, an extension of the CALEA compliance date until two years after the adoption of final standards is required.

III. The Commission Must Act Now To Extend the Compliance Deadline For All Telecommunications Carriers.

In its *Public Notice*, the Commission recognizes that “many carriers believe they will not be able to meet the compliance deadline.”²⁶ Indeed, every carrier currently faces the same situation. The equipment and software necessary to enable telecommunications carriers to come into compliance with CALEA is simply not commercially available. Moreover, as detailed

²³ *Id.* at 8.

²⁴ *Id.*; see also *AT&T Petition* at 10.

²⁵ See *FBI Petition* at ¶ 118; *TIA Petition* at 10 (citing Testimony of the Attorney General before the House Appropriations Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (Feb. 26, 1998)).

above, it is not likely to be available for quite some time. Given the common predicament faced by all carriers subject to CALEA, an industry-wide extension is fully justified. It is also clearly more efficient to grant an industry-wide extension than to process a multitude of repetitive extension requests all based upon the same facts. Requiring the submission of separate requests would be a significant resource drain on both the Commission and the industry.²⁷

In addition, it is imperative that the Commission act now to extend the compliance deadline. Otherwise manufacturers and carriers alike will feel compelled to expend significant resources in what is likely to be a futile attempt to comply with standards that very well may shortly change. By taking decisive action now, the Commission can eliminate at least a certain measure of uncertainty that distracts from the overall goal – the adoption of final standards.

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²⁶ *Public Notice* at 4.

²⁷ In the event the Commission declines to grant an extension of the compliance date applicable to all carriers, CenturyTel respectfully requests an individual extension on the basis of these comments.

IV. Conclusion.

For the reasons set forth above, CenturyTel respectfully requests that the Commission extend the deadline for complying with CALEA until two years after the date on which final CALEA standards are promulgated. Such action by the Commission is fully consistent with CALEA and will further the public interest, convenience, and necessity.

Respectfully submitted,

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May 8, 1998